IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.537 OF 2006

Vishwanath Kashinath Patwardhan ..Petitioner.

Vs.

Subhash Mahadev Mehta & Ors. ..Respondents.

...

Mr. S.D. Patil i/b Mr. A.V. Patwardhan for the Petitioner.

CORAM : DR.D.Y.CHANDRACHUD, J.

12th April, 2006.

P.C.:

An interim order was passed by the Civil Judge, Senior Division, Alibag on 22nd May, 2004 on an interlocutory application taken out by the Petitioner in the suit. The order directed the Grampanchayat to construct a gutter flowing adjacent to the boundary wall of the Petitioner / Plaintiff within a period of sixty days. The Learned Trial Judge observed that an open gutter was running adjacent to the boundary wall of the plaintiff's property and it was therefore necessary to issue necessary directions pending the suit. The Trial Court also observed that the waste water from the gutter was contaminating the water in the well adjacent to the

boundary wall. This order was challenged by the plaintiff in appeal, in so far as no relief was granted against the other defendants. The appeal was dismissed, however, with the observation that the Grampanchayat had not on its part challenged the order of the Trial Court in so far as it directed it to construct a gutter. Hence, the dismissal of the appeal filed by the Petitioner does not disturb the direction to the Grampanchayat The Court has been informed that a contempt application has already been taken out for non compliance of the order by the Grampanchayat. At this stage, the interference of the Court with the order of the First Appellate Court at the interlocutory stage is not warranted in proceedings under Article 227. The Petition is dismissed.

However, it is clarified that the learned Trial Judge shall dispose of the suit uninfluenced by any of the observations contained in the impugned order since it is confined to the disposal of the application for interim relief.